

**OPINION**  
**66-357**

April 15, 1966 (OPINION)

Mr. Robert Q. Price

State's Attorney

Cavalier County

RE: Taxation - Exemption for Disabled Veterans - Construction

This is in response to your letter in which you ask the following questions, all of which pertain to the construction of section 57-02-08, subsection 20, as amended, of the North Dakota Century Code:

1. Does the restriction that the unmarried widow shall not 'earn' more than \$3,000.00 including income from investments or Social Security or any source other than wages or salaries?
2. We presume that the law became effective on July 1, 1965; in this case are the benefits of it applicable to the taxes assessed in the year 1965 which would be due and payable in 1966?
3. Is the provision that the board of county commissioners are authorized to cancel unpaid taxes for any year in which the veteran shall have held title to such exempt property, applicable to the unmarried widow of the veteran?
4. Is the provision referred to in question three discretionary or mandatory as to the county commissioners?"

The original provision of the above mentioned subsection pertained only to disabled veterans who were able to furnish a certificate from the Veterans' Administration showing that the disabled veteran had a certain percentage of disability. The exemption was designed for the benefit of the veteran and his family. The legislature later realized that inadvertently they had not provided for the exemption to continue after the veteran became deceased and as such the benefit which was originally provided for did not inure to the family of the veteran. The amendment to subsection 20 provided that the same benefit be extended to the unremarried widow of a qualified deceased veteran. It should be further noted that the Legislature employed the language, "do not earn more than three thousand dollars net income exclusive of any pension for any service connected disability" as one of the conditions of the exemption. The term "earn" strongly implies that the income is the result of the services or labor of the veteran or the unremarried widow. However because of the specific exclusion of pension for service connected disability, under the rules of construction, the exclusions are limited to those named. Consequently all income of any kind except income from pensions for

service connected disabilities would be included.

In response to your first question, it is our opinion that the restriction on earning a net income of not more than \$3,000.00 applies to income from investments or Social Security or sources other than wages or salaries, except only income from pensions for service connected disabilities. It is, however, the net income of \$3,000.00 which controls rather than the gross income of \$3,000.00.

As to question no. 2, the section provides that "the board of county commissioners is hereby authorized to cancel the unpaid taxes for any year for which such veteran shall have held title to such exempt property." This section authorizes the county commissioners to cancel the unpaid taxes for any year. This contemplates that any time the veteran or the unremarried widow establishes eligibility to come within the exemption the county commissioners may cancel unpaid taxes without regard to the year in which the property was assessed or the taxes became due.

The amendments to the section in question became effective on July 1, 1965, but the provision that the board of county commissioners may cancel unpaid taxes for any year was a part of the original act as it appears in the North Dakota Century Code. We must assume that the Legislature was fully cognizant of this provision when the 1965 amendments were adopted.

Thus, in direct response to your second question, it is our opinion that the cancellation of taxes under the provisions of subsection 20 of section 57-02-08 of the North Dakota Century Code is fully applicable to the taxes which were the result of the assessment in the year 1965.

In response to your third question, on the basis of the discussion earlier herein, it is our opinion that the provisions of subsection 20, as to cancelling unpaid taxes, applies to an unremarried widow of a veteran, provided the other qualifications are met.

As to question no. 4, "\* \* \* \* the board of county commissioners are authorized to cancel unpaid taxes for any year \* \* \* \*" does not appear to carry the same mandate as found in the language such as "shall." It is an authorization to cancel such taxes. It does not say that it must cancel such taxes. However, the entire provision of section 57-02-08 provides that the property described therein shall be exempt from taxation. Such property would be exempt and if not cancelled by the county commissioners, the veteran or his unremarried widow would be able to petition for abatement of taxes, at which time the exemption would have to be granted pursuant to existing law. The Legislature simply provided for an abbreviated method of abating and cancelling such unpaid taxes without compelling the part to resort to the normal abatement procedure.

We must also remember that if the county commissioners are going to apply the provisions of subsection 20 they must apply them equally to all of those who qualify otherwise their action might be vulnerable on the grounds of discrimination. We are also concerned about another factor and that is if the Legislature had not intended that

the county commissioners cancel such unpaid taxes but left it solely with the discretion of the board of county commissioners as to when it should cancel such unpaid taxes or to permit the commissioners to cancel some and not others, this would be an unlawful delegation of authority on the basis that no guidelines or standards are provided for such procedure.

Because the taxes would have to be abated if proper application is made, it is our conclusion that the provision in the section in question was designed to be mandatory rather than discretionary. Thus, in response to your fourth question, it is our opinion that the provisions of subsection 20 of section 57-02-08 of the North Dakota Century Code are mandatory.

HELGI JOHANNESON

Attorney General